

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, WI

AMERICAN BIN & CONVEYOR, INC.

Employer

and

Case 30-RC-6492

SHOPMEN'S LOCAL 473 OF THE INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL,
ORNAMENTAL & REINFORCING IRON WORKERS,
AFL-CIO¹

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), as amended, a hearing was held before a hearing officer of the National Labor Relations Board (Board).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.²

¹The Petitioner's name appears as amended at the hearing.

²The Employer and Petitioner filed post-hearing briefs that were duly considered. The hearing officer's rulings made at the hearing were free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act,

and it will effectuate the purposes of the Act to assert jurisdiction in this case. The Petitioner, a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time production and maintenance employees employed by the Employer at its 221 Front Street, Burlington, Wisconsin facility, excluding office clerical employees, detailers, layout designers, professional employees, guards, and supervisors as defined in the Act.

There are approximately 17 employees in this appropriate voting group.

ISSUE

The issue presented at the hearing is whether the detailer and layout designers should be included within the production and maintenance unit.

The Employer contends that the lone detailer and the two layout designers share a community of interest with production and maintenance employees, and that it would be inappropriate to exclude them from the unit. To the contrary, the Petitioner would exclude the detailer and layout designers, arguing that they do not share a sufficient community of interest to be included in the unit.

DECISION SUMMARY

I find that the detailer and layout designers are technical employees, who do not share a sufficient community of interest to be included in the bargaining unit found appropriate.

BACKGROUND

The Employer is a custom fabricator that designs and fabricates sand and gravel equipment for the ready-mix and black top business. The Employer occupies a two-story building, with production facilities and offices on the first level, and the remainder of the offices on the second level. All together there are about 28 employees, including supervisors.

ANALYSIS

The chief engineer, Jeff Mensch, assigns the projects to the layout designers, who determine the design of the equipment, based on the sales contract's requirements. The detailer then takes the design, breaks it down into its constituent parts, assigns part numbers, and prepares a bill of materials. From there, it is sent to the production floor. Occasionally, when equipment is needed immediately, production begins before work is completed by the layout designers and the detailer.

Layout designers and the detailer are paid within a range of \$14 to \$20 per hour. Production and maintenance employees earn from \$10 to \$17 per hour. The only job requirement for the layout designers and detailer is the ability to understand and work with a CAD (computer aided design) program. Production and

maintenance employees (which include welders/fabricators, blasters, shipping and receivers, painters, and plasma operator) are not required to operate CAD programs.

The Employer's arguments for including the disputed positions in the bargaining unit are centered on a traditional community of interest analysis, based on *NLRB v. Action Automotive*, 469 U.S. 490 (1985). Petitioner, too, in its brief, cites *Action Automotive*, but arrives at the opposite conclusion.

Neither party analyzed the disputed classifications as technical employees, or considered the factors necessary for inclusion of technical employees in a production and maintenance unit. Although there is some overlap of factors, the technical employee analysis is distinct from the traditional community of interest analysis. *The Sheffield Corporation*, 134 NLRB 1101, 1103-1105 (1961).

In *The Sheffield Corporation*, 108 NLRB 349, 351 (1954), designers and detailers who were assigned to the engineering department and separately supervised, and whose work areas were apart from those of the production and maintenance employees, were found to be skilled technical employees, and were excluded from a production and maintenance unit. Likewise, in *Hancock Electronics Corp.*, 116 NLRB 442 (1956), a "draftsman detailer B" was excluded from the production and maintenance unit as a technical employee. In both those cases, the Board excluded those positions, following the existing policy of excluding technical employees whenever one party objected to their

inclusion. In the 1961 *Sheffield* case, the Board abandoned the automatic exclusion of technical employees upon the objection of any party, and set forth the factors to be considered whenever the unit placement of technical employees was in issue:

[D]esires of the parties, history of bargaining, similarity of skills and job functions, common supervision, contact and/or interchange with other employees, similarity of working conditions, type of industry, organization of plant, whether the technical employees work in separately situated and separately controlled areas, and whether any union seeks to represent technical employees separately. (footnote omitted) *Id.* at 1103-1104.

The parties disagree about the inclusion of the detailer and layout designers. There has been no history of collective bargaining with this Employer. The skills of the detailer and the layout designers are significantly different from those of the production employees. Although some production employees work with computers, they are not skilled in CAD applications. Production employees weld, fabricate, and assemble products -- jobs that the detailer and layout designers do not perform. As an example of the distinct nature of these jobs, the layout designers can do detailer work, but the reverse is not true.

Jeff Mensch, the chief engineer, supervises the detailer and the layout designers. Dick Bosworth, the plant foreman, supervises the production and maintenance employees. There is a

fair amount of contact between the detailer and layout designers and the production and maintenance employees, in large part due to the nature of their work. This is not a significant factor, however, favoring inclusion in the unit. *The Sheffield Corporation*, 108 NLRB, at 351, n. 11. Only one production employee, Peter Alby, the son of the president of the company, who is a leadperson in the production area, works as a detailer when needed. Alby started as a welder, but applied for a detailer position when a vacancy occurred. Because of his ability to work with CAD programs, he was awarded the job. Alby later changed his mind, and in 2001, he returned to the production area. Apart from Alby, there is no regular interchange between the disputed positions and the production and maintenance employees.

The detailer and layout designers have computer work stations on the second level, in the engineering department. No union seeks to separately represent the detailer and layout designer.

In its brief, the Employer argues that community of interest reasons support inclusion of the detailer and layout designers in the production and maintenance unit. Among the factors cited by the Employer are the following: "virtually the same pay structure," "virtually" the same work schedule, the same handbook, the same parking lot, "similar" dress code, identical fringe benefits, similar job skills, a "similar" work situs,

functional integration, a high amount of contact, employee interchange, and common supervision.

The Employer, citing *Jewish Hospital*, 223 NLRB 614 (1976) in its brief, contends that the Board's finding that engineering department employees must be included in a unit of maintenance and service employees requires that the detailer and layout designers be included in the production and maintenance unit. *Jewish Hospital*, however, did not involve the placement of technical employees in a production and maintenance unit, but rather involved the unique requirements of bargaining units in the health care context. *Id.* at 614-617.

CONCLUSION

The detailer and layout designers are assigned to the engineering department; they have separate supervision; they primarily work on the second floor of the building, apart from production and maintenance employees; they are paid on a scale that exceeds that of the production and maintenance employees; they perform no manual production duties; and they are required to have specific computer knowledge that production employees do not have. These factors militate against a finding urged by the Employer that the disputed classifications share a community of interest with production and maintenance employees. Accordingly, I find that the detailer and layout designers need not be included in the bargaining unit found appropriate in this case, and they are not eligible to vote in the election directed by this Decision and Direction of Election.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.³

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election day, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible

³In its brief, the Employer argues that the election should be held on a payday. The details of a directed election are not subject to litigation, and will be determined administratively following this Decision and Direction of Election.

shall vote whether or not they desire to be represented for collective bargaining purposes by **Shopmen's Local 473 of the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL-CIO**. If a majority of employees in the voting group vote for the Petitioner, they will be taken to have indicated their desire to constitute part of the existing engineering unit represented by Petitioner and I shall issue a certification of results to that effect.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, **two**, copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West**

Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before October 25, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W. Washington, DC 20570. **The board in Washington must receive this request by November 1, 2002.**

Signed at Milwaukee, Wisconsin on the 18th day of October 2002.

Joyce Ann Seiser, Acting Regional Director
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